

UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA

U.S.A. vs. Malcolm Kyle Miller

Docket No. 2:20-CR-3-1M

Petition for Action on Supervised Release

COMES NOW Stephen W. Larson, U.S. Probation Officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Malcolm Kyle Miller, who, upon an earlier plea of guilty to Possession of a Firearm by a Felon, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2), was sentenced by the Honorable Richard E. Myers II, Chief United States District Judge, on July 15, 2020, to the custody of the Bureau of Prisons for a term of 21 months. It was further ordered that upon release from imprisonment the defendant be placed on supervised release for a period of 3 years.

Malcolm Kyle Miller was released from custody on August 6, 2021, at which time the term of supervised release commenced.

On August 20, 2021, a Violation Report was submitted to the court advising that on August 11, 2021, the defendant admitted to violating the alcohol abstinence condition by consuming Vodka on August 10, 2021. Miller signed a written statement acknowledging his alcohol use. Inasmuch as the defendant acknowledged his alcohol use and was scheduled to undergo a substance abuse and mental health assessment at PORT Health in Nags Head, North Carolina, it was recommended he be continued under supervision without modification. The court concurred with the recommendation on August 20, 2021. Note: The defendant underwent a mental health and substance abuse assessment at PORT Health in Nags Head on August 31, 2021, and was recommended to participate in individual sessions at the rate of once per month.

On October 18, 2021, a Violation Report was submitted to the court advising that On October 6, 2021, a sweat patch worn by the defendant from September 20, 2021, to September 27, 2021, was determined by the laboratory to be positive for cocaine use. When confronted with the result, Miller admitted to using cocaine two weeks prior to the application of the sweat patch. Additionally, although the sweat patch did not indicate the use of marijuana or tetrahydrocannabinol (THC), the defendant admitted to using Delta-10, which contains THC, while wearing the sweat patch. Miller acknowledged that the probation officer specifically informed him that the use of cannabidiol (CBD) products was prohibited during his term of supervision. The defendant provided a written statement acknowledging his drug use. In response to the violation, it was recommended that Miller be continued under supervision without modification in that he was participating in mental health and substance abuse treatment at PORT Health in Nags Head and the probation officer was exploring intensive treatment alternatives with Miller's treatment counselor. The court concurred with the recommendation on October 18, 2021. Note: Miller's treatment plan was ultimately modified on October 28, 2021, to include PORT Health's Substance Abuse Intensive Outpatient Program (SAIOP) which entails group treatment at the rate of three days per week (3 hours per day). The defendant was successfully discharged from Port Health in Nags Head.

On December 17, 2021, a Petition for Action was submitted to the court advising that On December 9, 2021, prior to the collection of a urine specimen, the defendant admitted to the probation officer that he had been struggling with the use of suboxone which he had been illegally purchasing on the streets. Specifically, Miller admitted he used one suboxone pill per week from around the beginning of November 2021 until December 8, 2021. The defendant provided a written statement acknowledging this illegal drug use. Miller ultimately submitted to an instant urine screen which indicated the possible presence of THC/marijuana, no suboxone. As a sanction, the defendant was placed on a curfew with electronic monitoring for a period of 60 consecutive days.

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**RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS
FOLLOWS:**

On May 16, 2023, the defendant was charged with Misdemeanor Driving While Impaired and Reckless Driving to Endanger in Dare County, North Carolina (23CR308935). Miller called the undersigned probation officer on May 17, 2023, and admitted he was traveling at a high rate of speed when he was pulled over. Deputy Duwayne Gibbs with the Dare County Sheriff's Office contacted the probation officer and advised that the defendant was traveling in excess of 100 miles per hour, and when he conducted the traffic stop on Miller, he could smell the odor of alcohol. According to Deputy Gibbs and the police report, Miller refused to submit to an alcohol breath test. Deputy Gibbs instructed Miller to conduct a field sobriety test. Miller was arrested and transported to the Dare County Detention Center and charged with the offenses listed above. While at the detention center, Deputy Gibbs stated that Miller admitted to drinking alcohol, and a blood alcohol test was submitted for testing. The results from this test are still pending. As a sanction for these violations, the probation officer is respectfully recommending that the defendant be placed on 90 days curfew with electronic monitoring. The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that supervised release be modified as follows:

The defendant shall adhere to a curfew as directed by the probation officer for a period not to exceed 90 consecutive days. The defendant is restricted to his residence during the curfew hours. The defendant shall submit to the following Location Monitoring: Radio Frequency monitoring and abide by all program requirements, instructions and procedures provided by the supervising officer.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Dewayne L. Smith
Dewayne L. Smith
Supervising U.S. Probation Officer

/s/ Stephen W. Larson
Stephen W. Larson
U.S. Probation Officer
150 Reade Circle
Greenville, NC 27858-1137
Phone: 252-830-2343
Executed On: May 26, 2023

ORDER OF THE COURT

Considered and ordered this 30th day of May, 2023, and ordered filed and made a part of the records in the above case.

Richard E. Myers II
Richard E. Myers II
Chief United States District Judge